

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN MEDICAL SYSTEMS, INC. and
LASERSCOPE,

Plaintiffs,

v.

BIOLITEC, INC.

Defendant.

Civil Action No. 3:07-CV-30109-MAP

October 30, 2008

**BIOLITEC, INC.'S MOTION FOR
SUMMARY JUDGMENT OF NON-INFRINGEMENT**

Defendant biolitec, Inc. (“biolitec”) respectfully moves this Court for an order granting summary judgment of non-infringement of the asserted claims of U.S. Patent No. 6,986,764 (“the ‘764 patent”) in biolitec’s favor. As set forth in the accompanying memorandum of law, biolitec’s motion for summary judgment should be granted for the following reasons:

1. With respect to literal infringement, there is no dispute regarding the degree to which laser radiation at a wavelength of 980 nm is absorbed in water, and no reasonable jury could find that this absorption is negligible. Therefore, the accused biolitec device and method do not literally infringe the asserted claims of the ‘764 patent.
2. With respect to equivalents infringement, biolitec’s accused device and method cannot as a matter of law infringe the literally-absent photoselective vaporization limitation by equivalents for the following reasons. First, the ‘764 claims are specifically limited to wavelengths that are “absorbed only to a negligible degree by water.” biolitec’s 980 nm wavelength radiation is absorbed more than a negligible degree by water, is the opposite of that claimed, and therefore is necessarily excluded by this limitation. Second, to allow 980 nm

wavelength radiation, that is absorbed more than a negligible degree by water, to be equivalent to a wavelength that is not more than negligibly absorbed by water, would vitiate this limitation.

Third, the '764 specification denigrates wavelengths that are not both strongly absorbed in oxyhemoglobin and negligibly absorbed in water, touts the advantages of the claimed photoselective wavelengths over such inferior wavelengths, and thereby disavows such wavelengths from the scope of the claims.

For the foregoing reasons, and those set forth in the accompanying memorandum of law, it is respectfully requested that the Court grant Defendant biolitec's Motion for Summary Judgment of Non-Infringement of the '764 patent.

Dated: October 30, 2008

I hereby certify that a true copy of the above document was served upon the attorney of record for the Plaintiffs American Medical Systems, Inc. and Laserscope by electronic mail.

/s/ James F. DeDonato

THE DEFENDANT
BIOLITEC, INC.

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